

6. Chief Administrative Law Judge/Executive Director's Report:

Chief ALJ/Executive Director Jay Arcellana stated that the most recent Budget Letter from the Department of Finance continues to recognize the federally funded character of some State agencies, including the CUIAB, by exempting those funds from any required reductions in operations for the 2004/05 fiscal year. Included in the budget letter is a requirement that all agencies, as distinguished from departments, plan to reduce their funding by 20%. This is a new approach, in that where the cuts are to be made among the departments will be left up to each Agency; in our case, the Labor and Workforce Agency. The Administration seems to be looking for consolidation of functions within Agencies.

7. Branch Reports:

a. See # 6 above.

b. Deputy Chief ALJ Julie Krebs, Appellate Operations Branch, reported that they had registered 1470 cases, and disposed of 1593 cases, resulting in a slight decrease in the open balance of cases, which still remains higher than they would like. Appellate Operations did meet all three time lapse requirements for the month of August.

c. Deputy Director Pam Boston, Administrative Services Branch, reported that the new Sherman Oaks Office would be opening on September 15.

d. Deputy Director Mary Walton-Simons, Planning and Program Management Branch, reported the support staff conference in August was a success, and that survey results had been very positive. Deputy Director Walton-Simons thanked the Board for their support for this conference.

Deputy Director Walton-Simons advised that P&PM has formed a HUB typist team to help with the backlog of decision typing, as they have helped in the past with registrations. Chair Thornton thanked P&PM for their willingness to pitch in and help address these problem areas.

8. Chief Counsel's Report:

Chief Counsel Ralph Hilton noted that the Board's workload remains at a high level, and adding to that is a shorter time frame for issuing decisions and two vacancies on the Board. The court case workload remains fairly stable, at under 100 cases in litigation, even with five new cases filed last month.

9. Unfinished & New Business:

a. Proposed Precedent Decision No. 491—the proposed precedent decision was presented by Chief Counsel Ralph Hilton, as follows:

Unemployment Insurance Code section 1089 provides that each employer shall post information about benefit rights and further shall, at the time an individual becomes unemployed, supply the individual with copies of printed statements or materials relating to claims for benefits, pursuant to authorized regulations.

The failure of an employer to advise a terminated employee of his/her rights to benefits was an issue in *Wang v. Unemployment Insurance Appeals Board* (1990) 225 Cal. App. 3d 412. However, at that time the Employment Development Department had not adopted any regulations pursuant to section 1089, and so the court found that good cause could not be based upon an “employer’s failure to discharge a nonexistent duty to advise an employee” in that regard.

Subsequent to the *Wang* case EDD did adopt regulations under section 1089, requiring that employers shall give employees a specified EDD pamphlet (*For Your Benefit, California’s Programs for the Unemployed, DE 2320*) upon discharge, layoff, or leave of absence. P-B-491 holds that an employer’s failure to comply with those regulations should now be considered, along with other factors such as the claimant’s prior claims experience, in making the good cause determination. Hence, an employer’s failure to comply with the regulations is now a factor to consider, but it is not a controlling factor.

After some discussion of the particular facts of the case, the Board unanimously voted to adopt P-B-491.

b. Appeals Board Policy Statement #19—Proposals for updating the policy, and providing for changes in the delegation authority and the Executive Director removal and appointment provisions were presented by Chief Counsel Hilton. After deleting the change in delegation authority, upon Chair Thornton’s objection, the Board unanimously voted to adopt the other proposed changes.

10. Public Comment:

None presented.

11. Closed Session:

The regularly scheduled Board meeting adjourned, and the Board entered into closed session, separate from a closed session that was conducted before the open session meeting. No votes were taken on any matters in either closed session.